

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

**FILED**

JUN 03 2003

NANCY DREW SUDERS,

Plaintiff

NO. 1:00-CV-1655

PER-

HARRISBURG, PA.

DEPUTY CLERK

v.

ERIC D. EASTON, ET AL.,

Defendants

JUDGE SYLVIA H. RAMBO

**DEFENDANTS' MOTION TO CANCEL SCHEDULING  
CONFERENCE AND STAY PROCEEDINGS**

Defendants, by their counsel, with the concurrence of Plaintiff, by her counsel, respectfully move the Court to cancel the scheduling conference set for June 23, 2003, and to stay proceedings in this action pending a decision by the Supreme Court of the United States on the Defendants' petition for writ of certiorari. In support hereof, Defendants state as follows:

1. This is a civil action brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*
2. This Court granted Defendants' motion for summary judgment which Plaintiff appealed to the Court of Appeals for the Third Circuit.
3. By opinion and judgment dated April 16, 2003, the Court of Appeals reversed the decision of this Court. In so doing, the Court of Appeals held that a constructive discharge, when demonstrated, can constitute a tangible employment action within the meaning of Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998), and Faragher v. City of Boca Raton, 524 U.S. 775 (1998), and when an employee raises a genuine issue of material fact as to a claim of constructive discharge, an employer may not assert the affirmative defense of the employer's having exercised reasonable care to prevent and correct sexually harassing behavior and the employee's having failed

to take advantage of preventive or corrective opportunities provided by the employer. Slip. op. At 3-4.

4. Because this holding of the Court of Appeals for the Third Circuit places it in conflict with the holdings of other Circuits and presents an important issue of national significance to the interpretation and application of Title VII, the Defendants will be filing a petition for writ of certiorari in the Supreme Court of the United States within the next 4 - 6 weeks.

5. The interest of economy of resources, both judicial and litigant, support canceling the case management conference and staying proceedings pending a decision by the Supreme Court of the United States on the petition for writ of certiorari.

6. If certiorari is granted, this Court should have the benefit of the Supreme Court's holding and rationale as it considers the issues on remand. If certiorari is denied, the relatively short delay will not unnecessarily prolong the final disposition of the case.

7. Plaintiff's counsel has been contacted and has expressed his concurrence in this motion. Thus, there would be no prejudice to Plaintiff's rights by the Court's granting a stay.

8. Thus, conservation of resources, both judicial and litigant, support this unopposed motion for a stay of proceedings.


WHEREFORE, Defendants' motion to cancel the case management conference and stay proceedings should be granted.



Respectfully submitted,

D. MICHAEL FISHER  
ATTORNEY GENERAL

By:

  
GREGORY R. NEUHAUSER  
SENIOR DEPUTY ATTORNEY GENERAL  
Attorney I.D. #31485

SARAH C. YERGER  
DEPUTY ATTORNEY GENERAL

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15<sup>th</sup> Floor, Strawberry Square  
Harrisburg, PA 17120  
(717) 787-8106  
DATE: June 3, 2003

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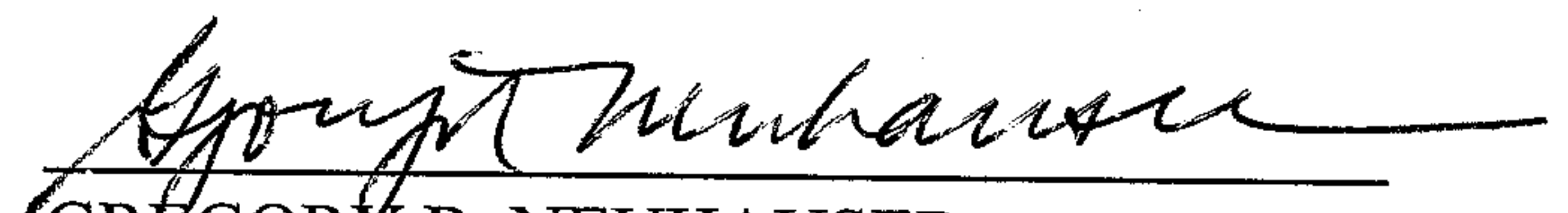
NO. 1:00-CV-1655

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**CERTIFICATE OF SERVICE**

I, **Gregory R. Neuhauser**, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, Office of Attorney General, hereby certify that on **June 3, 2003**, I caused to be served a true and correct copy of the foregoing document **Defendants' Motion to Cancel Scheduling Conference and Stay Proceedings**, by depositing it in the United States mail, postage prepaid, in Harrisburg, PA., addressed to the following:

Don Bailey, Esquire  
4311 N. 6<sup>th</sup> Street  
Harrisburg, PA 17110  
(717) 221-9600  
(Counsel for Plaintiff)

  
GREGORY R. NEUHAUSER  
SENIOR DEPUTY ATTORNEY GENERAL  
Attorney I.D. #31485

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